

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221838; B-221838.2 **DATE:** May 22, 1986

MATTER OF: Trans-Dyn Control Systems, Inc.

DIGEST:

Contracting officer acted reasonably in determining that awardee's proposal met the functional requirements contained in the solicitation where solicitation permits consideration of alternate methods to perform the contract work.

Trans-Dyn Control Systems, Inc. (Trans-Dyn), protests the award of a contract to the Sutron Corporation (Sutron) under request for technical proposals (RFTP) No. 5-SI-SD-03650, the first step of a two-step, sealed bidding procurement issued by the Department of the Interior, Bureau of Reclamation (Interior). The procurement is for a programmable master supervisory control (PMSC) and communications system to salvage a portion of the groundwater from the Closed Basin area of the San Luis Valley in Colorado. The work involves the construction of salvage wells and buried unpressurized lateral pipeline to deliver water into a conveyance channel for discharge into the Rio Grande River.

For reasons specified hereafter, the protests are denied.

As its bases for protest, Trans-Dyn contends that Sutron's step-one proposal does not meet the essential requirements of the RFTP and, as a consequence thereof, the firm was not eligible to participate in step two of the procurement nor receive the award. Specifically, the protester argues that (1) the water level and impeller flow transducers proposed by Sutron for its remote terminal unit (rtu) hardware do not conform to Interior's stated requirements; (2) Sutron's proposed radio equipment does not meet the agency's "essential performance requirements" and "FCC [Federal Communications Commission] type acceptance"; (3) the proposed alternate installation method for observation wells rtu's will not provide an equivalent level of protection; and (4) acceptance of Sutron's proposal represents a relaxation of the specifications which was not communicated to the other offerors as required by Federal

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Acquisition Regulation (FAR), 48 C.F.R. § 14.208(a) (1984). Trans-Dyn therefore asks that we recommend termination of Sutron's contract and award to itself as the next low responsive, responsible firm. We will discuss these questions in the order stated.

We have recognized that the two-step, sealed bidding procedure combines the benefits of competitive advertising with the flexibility of negotiation. The step-one procedure is similar to a negotiated procurement in that technical proposals are evaluated, discussions may be held, and revised proposals may be submitted. The step-one procedures require that technical proposals comply with the basic or essential requirements of the specifications, but do not require compliance with all details of the specifications. See Essex Electro Engineers, Inc., B-213892, Apr. 17, 1984, 84-1 C.P.D. ¶ 434.

If a technical proposal represents a basic change in the government's essential requirements, it can only be accepted if the agency informs the other offerors of the change and affords them an opportunity to submit revised proposals based upon the changed requirements. This comports with the fundamental federal procurement principle that all offerors must be treated fairly and equally so as to promote full and open competition. Id. at 3. Step two is conducted in accordance with sealed bidding procedures with the exception that the competition is limited to those firms that submitted acceptable technical proposals in step one. See FAR, 48 C.F.R. § 14.503-2 (1984).

Step one, the RFTP, was issued May 31, 1985, to 103 firms and requested the submission of technical proposals for a PMSC system "which will monitor and control wells and conveyance channel structures which make up the Closed Basin Project." The instructions for preparing technical proposals advised offerors that deviation from the specification requirements would be considered if alternate methods for meeting the requirements exist. Offerors were required to identify each area where the capabilities of the proposed equipment differed from the solicitation requirements.

Fourteen offerors responded to the RFTP by the August 16, 1985, closing date. Following an initial technical evaluation, Interior determined that nine proposals were unacceptable, four proposals--including Trans-Dyn's and Sutron's--were susceptible of being made acceptable through discussions, and only one proposal was acceptable. By

letter dated September 23, Interior notified the four offerors that submitted proposals capable of being made acceptable of the deficiencies in their proposals and gave each firm an opportunity to submit revised proposals by October 21, 1985. All four offerors responded and the technical evaluation panel found that the responses made their proposals technically acceptable.

The second step invitation for bids (IFB) was issued on November 19, 1985, to the five technically acceptable offerors. Bids, under this IFB, were to be based on the bidder's own technical proposal submitted in response to the RFTP. Bids were opened on December 12 and Sutron submitted the low bid of \$2,345,375 while Trans-Dyn was second low at \$3,740,793.08. Interior awarded the contract to Sutron, the low responsive firm on January 16, 1986. Trans-Dyn filed its protest against award with our Office on January 24, which was thereafter supplemented on February 6, 1986. Contract performance is ongoing, notwithstanding this protest, because the agency invoked the best interest clause. See FAR, 48 C.F.R. § 33.104(c)(2) (1984).

Trans-Dyn alleges that Sutron's proposed transducer^{1/} equipment is unacceptable since it is not capable of "generating and transmitting to a remote terminal unit ('RTU'), . . . a 4-20mA (milliampere) analog signal." Consequently, the protester asserts that Sutron's transducer equipment will be more difficult to maintain and costly to repair. Trans-Dyn also argues that Sutron's transducer equipment cannot meet the "specified system requirements for accuracy, calibration adjustment" since this 4-20mA transmitter was omitted from its system design.

As an initial matter, Interior refutes Trans-Dyn's claim that the specification requirements at issue in these protests are an "essential" or "mandatory" deviation from which requires rejection of a proposal. The agency asserts that the specifications "functionally describe and define operational objectives that are required to be accomplished by the PMSC system" and, as stated previously, that the RFTP expressly permits deviation from the solicitation requirements.

^{1/} A transducer is a device or element which converts an input signal into an output signal of a different form and is a component of the rtu. Sutron states in its comments on the protests that "the transducer and RTU act as a subsystem to measure a pressure or flow and report these measurements to the project office."

The agency and Sutron both report that Sutron's design approach for the PMSC does not include use of the 4-20mA (intermediate) transmitters. However, both contend that the rtu configuration Sutron intends to use does not require a 4-20mA analog transmitter. In particular, the agency asserts that in reviewing Sutron's equipment proposal, which includes a Druck PDCR 10/D water level transducer, the technical proposal evaluation committee (TPEC) determined that this type transducer "meets or exceeds the solicitation's requirement for overpressure protection and accuracy." Finally, with respect to the calibration function, TPEC concluded that the Druck portable water level transducer calibrator unit proposed by Sutron will provide the zero and span control required by the RFTP. Moreover, the agency disputes Trans-Dyn's claims that omission of the intermediate transmitter will have a negative impact on the functional capabilities, system maintenance and reliability of the PMSC.

Interior argues that Sutron's equipment and system design will not only enhance the system's reliability, but reduce maintenance costs. The agency advances various reasons for this conclusion. For example, it states that elimination of the intermediate transmitter removes one additional "component subject to failure and thereby reduce[s] replacement and repair costs." Additionally, the agency compared use of the Druck portable water level transducer calibrator with the "traditional" calibration method using a 4-20mA transmitter and found that use of the Druck calibrator would reduce the time spent for field service calibration, thereby reducing costs.

Finally, the agency points out that Trans-Dyn's allegation that the 4-20mA transmitters are "essential" requirements of the specifications and are required for all rtu analog inputs conflicts with Trans-Dyn's own proposal submitted in response to the RFTP. The agency states that Trans-Dyn does not--

"list 4-20MA transmitters for their proposed water level and flow transducers on page 22 of their proposal nor do they indicate any 4-20MA transmitters on their equipment block diagrams on page 13. Trans-Dyn also failed to indicate that they were providing 4-20MA transmitters for the Government supplied 1000 OHM slidewire analog transducers."

Trans Dyn has not responded to this contention so we will assume it is correct.

It is apparent that the parties fundamentally disagree as to the method and manner of designing and developing the PMSC. The fact that the protester disagrees with the agency's evaluation does not render the evaluation unreasonable. See General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 C.P.D. ¶ 351. Moreover, our review of an agency's technical evaluation under an RFTP is limited to the question of whether the evaluation is reasonable. Rapistan, A Division of Lear Siegler, Inc., B-215837, Nov. 23, 1984, 84-2 C.P.D. ¶ 549. However, in making this assessment, we will accept the considered judgment of the procuring activity unless it is shown to be erroneous, arbitrary or made in bad faith. Herblane Industries, Inc., B-215910, Feb. 8, 1985, 85-1 C.P.D. ¶ 165. Here, our analysis of the issue and in camera review of the record support Interior's decision to permit Sutron to participate in step two of the procurement and ultimately to receive award as the low bidder.

Trans-Dyn's protest that, in its view, the 4-20mA transmitters are "essential" or "mandatory" requirements of the specification and that Sutron's proposal "modified" or "failed to conform" to these specification requirements is not well founded. Nothing in the record suggests that use of a 4-20mA transmitter is the only mechanism that can ensure accuracy of function or reliability of the PMSC system. On the contrary, as we have already indicated, the RFTP called for a PMSC system design that is consistent with the functional requirements of the specification and expressly invited offerors to "submit more than one technical proposal if alternate methods of meeting specification requirements are possible." (Emphasis added.)

Here, Sutron submitted an alternate approach to achieve and satisfy the stated functional objectives and goals of the PMSC system. The agency and its technical experts concluded that Sutron's alternate system design would meet and, in certain areas, exceed the functional requirements for the system. Trans-Dyn obviously disagrees and has presented detailed arguments to contradict the agency's technical determination. However, we have consistently held that it is not the function of our Office to resolve technical disputes. See Rapistan, A Division of Lear Siegler, Inc., B-215837, supra. Consequently, we find Interior's evaluation of Sutron's proposal, which eliminated certain features, to be reasonable in view of the fact that Sutron's system design will meet the functional requirements for the PMSC system.

Another basis of protest asserted by Trans-Dyn is Sutron's alleged noncompliance with the RFTP specifications for radio equipment. The protester specifically alleges that Sutron's radio equipment will not satisfy certain essential requirements for the remote project office and repeater site radios. For example, Trans-Dyn states that the specifications require remote site radio transmitters to have an radio frequency power output of four watts but Sutron's proposed transmitter output is allegedly only one to two watts; the repeater site radio equipment offered by Sutron allegedly does not satisfy the requirement for continuous duty rating and solid-state switching; and Sutron's radio equipment allegedly does not meet Federal Communications Commission (FCC) certification and is not designed to operate at required government frequencies.

In response to this basis of protest, the agency and Sutron filed detailed rebuttals to each allegation of non-compliance. For example, Interior points out that with respect to the FCC certification requirements, Sutron's specification sheet for its frequency modulation transmitters and receivers states that, when properly installed, the transmitter and receiver performance comply with the requisite FCC requirements.^{2/} With respect to the required continuous duty rating for the repeater site radio, the agency and Sutron again direct our attention to the transmitter specification data for the proposed radio equipment which indicates that the equipment has these features. The agency contends that its evaluation team thoroughly reviewed Sutron's proposal for radio equipment and determined that it met the requirements of the specifications. Interior also concluded that although Sutron did not specifically include data on its radio equipment overload protection in its proposal, that omission was not critical in view of the fact that Sutron took no exception to this specification requirement.

We believe Interior properly determined that Sutron's proposed radio equipment system met the actual specification requirements. We have examined the relevant portions of

^{2/} The agency states that this section of Sutron's proposal which addresses the FCC requirements was provided to the protester in response to a Freedom of Information Act (FOIA) request. Trans-Dyn does not dispute this assertion.

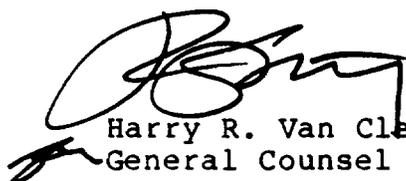
Sutron's and Trans-Dyn's proposals^{3/} and TPEC's report and find no merit to the protester's allegations.

Trans-Dyn also contends that Sutron's proposal did not satisfy another requirement of the RFTP, i.e., installation of rtu's in observation wells. The protester alleges that Sutron's proposed installation of rtu's in observation wells "is noncompliant with drawing 8 and exposes the RTUs to damage from moisture and temperature extremes." The protester further asserts that while the specifications permit offerors to propose alternate installation methods, "acceptance of such alternates is specifically predicated on demonstration in the proposal of sufficient protection of the RTU from moisture and temperature extremes." (Emphasis added.) Trans-Dyn alleges that Sutron did not provide "any" information in support of its alternate installation method.

The specification, as amended by amendment No. 3, requires that observation wells rtu's may be installed either as shown on drawing 8 (1298-D-221) or any alternate method if the offeror "can demonstrate sufficient protection [for the rtu] from moisture and temperature extremes."

The agency reports that Sutron was not required, during step one of this procurement, to provide "a detailed design of proposed alternative observation well installations." According to Interior, the instructions for preparing technical proposals only required, in section 1(a)(4), that offerors submit with their proposals an equipment sketch of "below ground remote terminal equipment." Sutron provided a sketch, figure 12-8, of its below-ground rtu in its proposal. Our Office was furnished a copy of this document for in camera review. The record also indicates that Sutron's alternate installation method will be subject to an actual demonstration test under "specified physical and environmental conditions" with the government's designated representatives in attendance. On the basis of this record, we cannot find that Interior's determination that Sutron's proposal met the requirements of the RFTP was unreasonable.

In view of the above findings, we deny the protests.


Harry R. Van Cleve
General Counsel

^{3/} Various portions of both offerors' proposals contain Trade secrets and proprietary data. As a result, our review of these documents was done in camera and a discussion of our findings is necessarily limited.