



Comptroller General  
of the United States  
Washington, D.C. 20549

# Decision

**Matter of:** Sanstrans, Inc.

**File:** B-245701

**Date:** January 27, 1992

Gregory A. Edgell for the protester.  
Allen L. Shulman for United Refrigerated Services, Inc., an interested party.  
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.  
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Agency reasonably determined proposal to be technically acceptable where offeror explicitly agreed to satisfy all solicitation requirements and provided a plan to satisfy warehouse space requirement by constructing necessary additional facilities and making available acceptable alternate facilities while construction was being completed.
2. Protest that agency personnel did not make information concerning possible increase in business available to all offerors is denied where, during site visits, agency informed all offerors in a functionally similar manner of the possible increase.

## DECISION

Sanstrans, Inc. protests the award of a fixed-price indefinite delivery/requirements contract for contractor-owned, contractor-operated refrigerated warehouse services to receive, store, assemble and distribute government-owned perishable food products in the Defense Subsistence Office (DSO), Columbia, South Carolina area to United Refrigerated Services, Inc. The contract award was by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, under request for proposals (RFP) No. DLA13H-91-R-2078. Sanstrans contends that the awardee does not have the warehouse capacity or office space required by the solicitation and will pay less than the wage scale required

under the Service Contract Act. Sanstrans also contends that agency personnel did not make all material information available to all interested offerors during discussions.

We deny the protest.

The RFP, issued on March 7, 1991, required that the contractor furnish, among other things, warehouse services at prices to be inserted in the RFP schedule and to provide office space and inspection areas for use by government personnel. The RFP required that offerors submit technical and business proposals. The technical proposals were to be evaluated under the following factors in descending order of importance:

1. Experience/Past Performance
2. Technical Plan
3. Quality Assurance Plan
4. Location

Under the Technical Plan, each offeror was to address its warehouse size, capabilities, and condition, management plan, material management, and its ability to provide administrative space.

The agency included in the solicitation estimates to be used by offerors in computing the necessary warehouse space. For example, the agency estimated that 154,920 hundred weight (CWT) of freezer and cooler items would be stored and distributed during the initial contract period, with 953 CWT per day handled during peak periods. Monthly estimates for freezer and cooler items were also provided. Additionally, the agency estimated that 192,000 CWT of fresh fruits and vegetables would be stored and distributed in the initial contract period with 1,031 CWT per day handled during peak periods. Again, monthly estimates were provided. The solicitation stated that "[a]t a minimum, two rooms for fresh fruits and vegetables are necessary . . . ."

As to office space, the solicitation provided that offerors could offer office space for only the terminal market buyer or the full DSO staff, but indicated that the agency "desires co-location of the full DSO staff." A list of 13 "mandatory" requirements and 33 "desirable" security measures concerning the facilities was included in the solicitation.

In the final award selection, the RFP provided that technical quality was to be more important than price but that price would be more important as proposals become more equal in their technical merit.

Additionally, the solicitation included the clause set forth at Federal Acquisition Regulation (FAR) § 52.222-41, which requires the contractor to comply with the Department of Labor's Service Contract Act (SCA) wage determinations.

Four proposals were received by the May 23 closing date. The agency evaluated each of the proposals and the evaluators made visits to each of the offeror's facilities. Telephone negotiations were conducted with all four offerors on August 23 and on August 26. According to the contracting officer, during the site visits all offerors were informed of a possible increase in the volume of fresh fruits and vegetables. Best and final offers (BAFOs), requested by August 30, were received from three of the four offerors. The evaluators concluded that the offer from the protester at \$2,510,559.32 and that from United at \$2,267,450 were both acceptable and technically equivalent. Because United's price was approximately 10 percent lower than Sanstrans', the agency determined that United offered the best value and awarded United the contract on September 6. This protest followed.

Sanstrans argues that United does not have the warehouse/freezer or office space required by the solicitation. The protester states that United's offer was based upon a promise to construct an expanded facility to handle the government's requirements but that the facility will not be ready by the October 1 start date. Therefore, according to the protester, United's offer does not conform to an essential requirement of the solicitation and should have been rejected. The protester also alleges that United will pay its employees less than the minimum SCA wages and that the contracting office gave the awardee more detailed information concerning expected increases in the volume of fresh fruits and vegetables than it gave to other offerors.

As to United's facility, the record shows that while United currently has sufficient space to handle DPSC's entire account, some of this space is leased to commercial accounts. Therefore, United proposed to build office space and expand its warehouse after award of the contract. Specifically, United planned to build additional dock, office and cooler space to support DPSC's distribution and submitted a construction schedule indicating that the expansion would be fully operational by the week of November 25. The proposal specifically allowed for co-location of the DSO staff and took no exception to any of the 13 mandatory provisions concerning office space. United also offered, during discussions, to reposition its commercial accounts at other locations if necessary, and

thereby handle the DPSC volume at its present facility. We therefore see no reason why DLA could not reasonably conclude that United could and would accommodate the agency's space requirements.

As to Sanstrans' allegation that United intends to pay wages at rates less than those fixed by applicable SCA wage determinations referenced in the RFP, the record shows that United took no exception in its price proposal to the applicable wage determinations. Thus, under the fixed-price contract involved here, United must pay its employees at the SCA rate; the fact that United may have proposed below-cost prices is not itself a reason to reject its proposal since award to a responsible firm on the basis of such an offer is legally unobjectionable. Allen-Norris-Vance Enters., Inc., B-243115, July 5, 1991, 91-2 CPD ¶ 23.

As to the agency's alleged failure to make material information available to all offerors, Sanstrans argues that while it was told of a potential increase in fresh fruits and vegetables volume, United was given a specific "growth figure of 30 percent." Sanstrans says that it did not lower its initial price in its BAFO "since we were unaware of a potential 30 percent increase" and argues that United, which lowered its prices in its BAFO, must have dropped its price because it was given this additional information. Sanstrans argues that the failure to provide all offerors with the information about the 30 percent increase constitutes fraud or bad faith on the part of the agency.

The agency maintains that it does not know the exact amount of the possible increase or even if there will definitely be an increase in the fresh fruit and vegetable volume. Rather, it is aware only of revised procedures which may have an impact on the volume. Specifically, the agency reports that, as of October 1, the new Defense Commissary Agency (DeCA) will become operational and commissaries will be required to purchase all fresh fruits and vegetables from the DSO unless an exception is granted. Many commissaries now bypass the DSO by purchasing fresh fruits and vegetables directly from vendors. The agency says, however, that it did not include increases in the solicitation because it was not aware of any firm commitments for receiving, storing or shipping additional fresh fruits and vegetables at the Columbia DSO warehouse. Instead, in anticipation of some increase, the agency informed all offerors of these changed procedures and of the possibility of a resulting increase in the fresh fruit and vegetable volume.

In response to the protest, United does state that it was told that "the increase, should it occur . . . could be as much as approximately 30 percent. . . ." In our opinion, however, the information communicated suggests a ceiling for

the projected increase but does not reasonably convey an explicit "growth figure" as alleged by Sanstrans. Indeed, as reported by the agency and evidenced in United's statement, no definite growth figure was revealed and since it appears from the record that the competitors are knowledgeable contractors with a working familiarity with the procedures and volumes involved, we conclude that the offerors were provided with substantially the same information on which to base their prices. Moreover, the fact that United's BAFO prices decreased does not mean that United was given an unfair advantage. A price reduction in a BAFO is a relatively common occurrence and by itself is an insufficient basis to support a conclusion that the agency disclosed information to the company reducing its pricing. See Oak Street Distribution Center, Inc., B-243197, July 2, 1991, 91-2 CPD ¶ 14. United also did not just reduce its price on the two line items concerning fresh fruits and vegetables but reduced its prices substantially similarly across all line items, which suggests that United simply cut its prices, as it states, to insure the competitiveness of its offer. In addition, Sanstrans does not explain or demonstrate how knowledge of the ceiling on the increase would have resulted in its decreasing its BAFO price.<sup>1</sup>

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1</sup>Sanstrans' allegation of bad faith on the part of contracting officials is without merit. To establish bad faith, our Office requires the presentation of convincing proof that government officials had a specific and malicious intent to injure the protester. WesternWorld Servs., Inc., d/b/a The Video Tape Co., B-243808.3, Aug. 12, 1991, 91-2 CPD ¶ 182. Sanstrans has not met this standard.