



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

B-178409

September 14, 1973

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PhysiTech, Inc.  
1 Fairway Plaza  
Huntingdon Valley, Pennsylvania 19006

Attention: Mr. John P. Skurla  
President

Gentlemen:

We refer to your letter of April 9, 1973, and subsequent correspondence, protesting the award of a contract to Universal Technology, Inc., (Optron, Division) for a requirement of Optron Displacement Followers and Lens Systems under Request for Proposals (RFP) No. DAADJ5-73-R-0126, issued by the Department of the Army on March 13, 1973.

You maintain that the Department improperly decided that your Model 39A System was not equivalent to the Optron models and could not be considered for award. We must agree with the Department's decision for the reasons stated below.

The procurement was negotiated under 10 U.S.C. 2304(a)(11), which authorizes negotiation of a contract where experimental, developmental, or research work is involved. The Department states that the research work involved here is the determining of velocities and accelerations of small gun components from measurements of displacements at the Aberdeen Proving Ground. In accordance with this statement, the Determination and Findings (D&F), dated February 16, 1973, in support of the authority to negotiate here contains the following pertinent findings:

"Procurement by negotiation of the above described property is necessary because experimental results of the project for which items are being procured show that data must be obtained simultaneously from several points on the weapon and the man as the weapon is fired. Only one piece of equipment is available for use on the

[Protest of Negotiated Contract Award]

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project and the electronics for data gathering are set up for this instrument.

"Use of formal advertising for the procurement of the above described equipment is impracticable because the project requires additional compatible testing capability before it can proceed."

By disposition form, dated February 16, 1973, the contracting officer also noted that there was "no other known instrument of this type [Optron models] available on the market."

On the basis of these findings, the Department issued the subject RFP on a sole-source basis to Optron. The RFP contained the following pertinent specifications for the Optron models:

Frequency Response: DC to 25 khz

Full Scale Step Response: 10 usec

Servo Operation

On April 5, 1973, the Department awarded the requirement to Optron, notwithstanding your protest that your system should also be considered for award. Delivery of the items was to be made in May 1973.

You maintain that the Department excluded your system from consideration for award primarily because of an unsatisfactory test of your system in 1968, and that a recent test of your system shows the equivalence of your models to the Optron models.

The Department states that your system was not considered equal to the Optron models because current descriptive literature on your models, rather than testing in 1968, showed that they did not comply with certain requirements of the Government. The Chief, Dynamics Branch, at the procuring activity stated in this regard, as follows:

"We require a frequency response of 25 KHz. With the scan or data sampling rate of 30 KHz, as stated in the PhysiTech bulletin, the frequency response will be considerably less than required. The required full scale step response is 10 per second while the PhysiTech bulletin states 30 per second. The output of the PhysiTech unit attempting

to follow the displacement of a gun barrel vibrating at a frequency of 20 KHz would be very misleading. Another reason that a servo-type system was specified is that when measuring the displacement of components of automatic gun mechanisms, smoke generally causes changes in the light intensity during firing and nonuniformly distributed oil films produce bright changeable reflections. The servo-type system locks on and tracks a target and is not seriously affected by these changes. The continuously scanning type system requires intense uniform lighting over the field of motion and is unsatisfactory under the conditions that we intend to use the system."

With respect to the recent testing of your system, the Chief, Dynamics Branch, by disposition form of July 5, 1973, copy enclosed, states that such testing did not show the equivalence of your system to that of the Optron system with respect to scanning performance and frequency response.

We have consistently held that it is primarily the procuring agency's responsibility to determine specifications reflecting the actual needs of the Government, and that we will not question the determinations unless they are shown to be clearly in error. 50 Comp. Gen. 193, 199 (1970). Based on our review of the agency's technical position, we cannot conclude that the Department's specifications reflect other than its actual needs for this requirement, or that your system meets the Government's needs.

In view of the foregoing, your protest must be denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States