



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

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B-177906 (2)

OCT 8 1973

Systems Technology Corporation
P.O. Box 4165
Huntsville, Alabama 35802

Attention: Mr. Carl E. Harrison
President

Gentlemen:

We refer to letter of February 6, 1973, protesting the award of a contract to Ultrasonics, Inc., under request for proposals (RFP) HA/OPER 7301 issued by the Department of Labor on September 25, 1972, for a study of the effectiveness of labor market information systems.

You maintain that the Department improperly awarded the contract to Ultrasonics at a higher estimated cost than that proposed by you. We cannot question the award for the reasons stated below.

The RFP required offerors to describe how they proposed to carry out the eight work tasks for the study which included:

"Survey and become familiar with all local LMI (labor management information) sources * * *.

* * * * *

"Assess the effectiveness, at the local level, of * * * LMI programs in the pilot areas. * * *

* * * * *

"Document the experience gained * * * and make recommendations for * * * development of a comprehensive LMI system."

Offerors were also requested to describe how they planned to organize the work in the pilot areas and how they expected to maintain liaison with the Department's project officer. Finally, the RFP required offerors to submit cost-plus-fixed-fee proposals.

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Criteria for evaluation of proposals and their relative weights were set forth in the RFP in pertinent part as follows:

- | | [Weights] |
|---|-----------|
| "A. The clarity and specificity with which the offeror details the work to be performed and the extent to which the proposal displays an understanding of the purpose of this request for proposal. | 4 |
| "B. The effectiveness of the proposed methodology. | 5 |
| "C. Quality of experience of the offeror * * *. | 3 |
| "D. Experience and qualifications of key staff * * *. | 5 |
| "E. The fiscal, technical and staff resources of the offeror * * *. | 3 |
| "F. The level of effort proposed, its consistency with the proposed budget and the relative economic advantages of the proposed cost structure to the Government. | 5 |

Paragraph 10(g) of Standard Form 33A, Solicitation Instructions and Conditions, of the subject RFP also provided:

"The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government."

Sixteen proposals were received by the closing date for the procurement on November 6, 1972. Subsequently, proposals were reviewed and rated in accordance with the evaluation criteria. The Department reports that Ultrasytems received the highest weighted score of 9,820 for its proposal and proposed an estimated cost of \$553,309 to do the work. You received the ninth highest score of 7,810 for your proposal and proposed an estimated cost of \$338,520. Although your proposal ranked in the top 25 percent of the offers received in understanding of the work to be done and the effectiveness of proposed methodology, Ultrasytems scores in these categories were substantially higher than your scores. In addition, your proposal was ranked in the bottom half of the proposals received in three of the remaining evaluation criteria.

The Department also reports that after proposals were evaluated, the evaluation panel members discussed the top rated six proposals and rerated them. Since your proposal was ranked ninth, the Department gave no further consideration to your offer. The Department reports events subsequent to rerating, as follows:

"In the final weighted rating the Ultrasonics proposal received the highest score * * * and the Systems Technology proposal was ninth from the top * * *. The Contracting Officer designated Ultrasonics for award without negotiation.

* * * * *

"Contract was awarded in accordance with the provisions of Section 10(g) of Solicitation Instructions and Conditions, included in the RFP."

Federal Procurement Regulations (FPR) 1-3.805-1(a) states the general requirement that written or oral discussions be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered, except that the requirement need not necessarily be applied, among other situations, to:

"(5) Procurements in which it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price * * *."

We have held that "competition," sufficient to support award of a cost-type contract on an initial proposal basis, is obtained when several offerors, as here, submit independent cost and technical proposals and the offeror with the most favorable initial proposal, cost and other factors considered, is selected for award at a fair and reasonable cost. See 52 Comp. Gen. 346, 350 (1972). Moreover, an award may properly be made to an offeror who has submitted a technically superior proposal at a higher estimated cost than that proposed by an offeror submitting a technically inferior, although acceptable, proposal. D-170632(1), May 3, 1971, copy enclosed.

We think it clear that "adequate competition" was obtained for the subject award. Moreover, we cannot disagree with the Department's evaluation that Ultrasonics submitted the most favorable proposal, considering technical and cost factors, although the company's estimated costs were higher than those in your proposal.

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With respect to the reasonableness of the contract cost (\$553,309), the Department reports that the cost, considering the professional effort proposed by Ultrasonics, is fair and reasonable even when compared to the cost proposed by the second ranked concern, as follows:

"It was the opinion of the contracting officer that the 159 man-months of professional effort proposed by Ultrasonics would be required to adequately complete the study within the required 21-month contract period, and reflects a better understanding of the problems and the related need for a greater proportion of professional staff.

"Comparable proposed total indirect costs (including subcontract indirect costs) are \$55,000 higher for Ultrasonics than for Olympus. This is partly a function of the significantly greater costs involved in fielding a larger professional staff. * * *

"* * * While Ultrasonics' total fee is here [sic] higher than Olympus', it is considered reasonable for a profitmaking organization. Olympus, a non-profitmaking organization, proposed an unusually low fee. Our expectations of Ultrasonics being able to meet all time and quality requirements greatly outweighed the cost differential.

"In terms of total estimated cost per professional man-months of effort, Ultrasonics estimated \$3,473 * * *. This is accounted for by the fact that the Ultrasonics proposal calls for the use of fully qualified professional employees, while Olympus proposed to use part-time students and retired persons for a large part of its local professional staff."

We must agree with the Department's view. We further believe such analysis also demonstrates the reasonableness of Ultrasonics' cost in relation to all other offerors.

Since the criteria for an initial proposal award are met, and because the Department has advised us that no uncertainty existed as to the technical or pricing aspects of any proposals, we cannot question the legal propriety of the Department's actions here.

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

Sincerely yours,

Paul G. Dembling

For the
Comptroller General
of the United States