

Shipman 119284

DECISION



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

FILE: B-207423 **DATE:** August 24, 1982
MATTER OF: DSI Computer Services, Inc.

DIGEST:

Although contracting agency did not take into consideration factors bearing on whether contract admittedly awarded incorrectly should be terminated, no remedial action on procurement is recommended since short time now remains on contract.

DSI Computer Services, Inc. (DSI), protests award to Tymshare Computer Maintenance (Tymshare) of a 5-month computer maintenance contract for \$27,500 under request for quotations (RFQ) DTFA01-82-R-15421 issued by the Federal Aviation Administration (FAA) on the basis that DSI was the low offeror because of the prompt-payment discount offered.

FAA agrees with the protester. FAA acknowledges that the discount makes DSI's offer low and that FAA incorrectly excluded the discount in the evaluation of the offer. However, since the awarded contract, effective May 1, 1982, was about two-fifths complete at the time FAA reported to us on the protest and the savings in making an award to DSI for the last 3 months would be \$175.20, against which FAA would have to offset the costs of terminating the Tymshare contract, FAA decided it would not be in the best interest of the Government to terminate the contract.

The record does not show what the costs for terminating the Tymshare contract would have been. Unless the costs of terminating are substantial, the mere likelihood of terminating costs does not justify a failure to terminate. United States Testing Company, Inc., B-205450, June 18, 1982, 82-1 CPD 604. Further, the determination of whether an improperly awarded contract should be terminated involves the consideration of several other factors, including the seriousness

of the procurement deficiency, the degree of prejudice to other offerors or the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, and impact of a termination on the procuring agency's mission. United States Testing Company, Inc., supra.

On the record before us, we do not find that the FAA took these factors into consideration. Were it not for the fact that a short time now remains for the performance of the contract (September 30 is the expiration date), we would recommend a termination of the Teledyne contract and award to DSI for the remainder of the contract. Although extent of performance is only one of several factors to be considered ordinarily in deciding whether to terminate an incorrectly awarded contract, in this case that factor outweighs the other factors, since, as a practical matter, it is too late to recommend corrective action. H. R. Simon & Co., Inc., B-199301(1), March 6, 1981, 81-1 CPD 177. However, we are drawing to the attention of the Secretary of Transportation the factors that the FAA should consider in the future in deciding whether to take corrective action.

Milton J. Fowler

Acting Comptroller General
of the United States



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

B-207423

August 24, 1982

The Honorable Drew Lewis
The Secretary of Transportation

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the matter of DSI Computer Services, Inc.

Although we are not recommending any remedial action on the immediate procurement in view of the short time now remaining on the contract, we are inviting your attention to that portion of the decision which points out the factors that the Federal Aviation Administration (FAA) should consider in deciding whether to take corrective action.

We suggest that this be brought to the attention of the FAA for future guidance.

Sincerely yours,

A handwritten signature in cursive script that reads "Shilton J. Jordan".

Acting Comptroller General
of the United States

Enclosure