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DECISION



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

FILE: B-210969

DATE: July 14, 1983

MATTER OF: Sidereal Corp.

DIGEST:

Decision to purchase automatic data processing equipment on a sole-source basis is not justified where agency failed to consider affirmative response to Commerce Business Daily notice, and meaningful competition was feasible.

Sidereal Corporation (Sidereal) protests the sole-source award of contract No. DTFA01-83-C-30029 to Databit, Incorporated (Databit), by the Department of Transportation, Federal Aviation Administration (FAA), for automatic data processing equipment (ADPE). For the reasons stated below, the protest is sustained.

The protest concerns the FAA's decision to purchase ADPE which it had been leasing from Databit--specifically, four communication terminals with printers and stands. The FAA synopsisized the intended noncompetitive purchase in the Commerce Business Daily (CBD), stating that affirmative responses from capable firms would be considered.

Sidereal responded to the synopsis. However, the FAA reports that, for unknown reasons, the contracting officer was not informed. Subsequently, an FAA Sole-Source Board approved the purchase of the Databit equipment because only that equipment could meet operational requirements, and no responses to the synopsis were received.

The FAA admits that the procurement was "improperly handled" in that Sidereal should have been afforded an opportunity to compete.

Notwithstanding this, the FAA contends that Sidereal was not prejudiced. The FAA explains that Databit had a substantial price advantage by Databit allowing credit for the lease payments toward the purchase price of the equipment. Further, the continued lease of the old equipment until any new equipment became fully operational could result in additional cost. Finally, the time required

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to install and debug any new equipment as well as train personnel to operate it would jeopardize ongoing operations. In support of these contentions, the FAA points out that it recently purchased similar communication terminals from the protester several months ago under an advertised procurement, and that the old and new systems currently are operating parallel to one another until the new equipment becomes fully operational.

Sidereal refutes these contentions. Sidereal maintains that it is able to price the equipment competitively, and that the FAA's statement that it would take several months before the Sidereal equipment would be fully operational is without merit. Moreover, Sidereal contends that the fact the FAA recently purchased Sidereal equipment shows that the protester was capable of performing the present contract. Thus, Sidereal maintains that the requirements should be resolicited.

Since the FAA failed to consider Sidereal for this requirement, it is impossible to ascertain whether Sidereal was prejudiced. However, the FAA's admission that Sidereal should have been afforded the opportunity to compete and the protester's recent receipt of an FAA contract for similar equipment convince us that meaningful competition was feasible.

Notwithstanding our conclusion, there is no practical relief we can recommend which would be in the best interest of the Government since the contract has been performed. However, the FAA did award Sidereal a recent contract and has assured that Sidereal will be given the opportunity to compete in the future.

Protest sustained.

for *Waring R. Van Cleave*
Comptroller General
of the United States