

DOCUMENT RESUME

OR141 - [C3428557]

**[Allegation That Agency Misstated Basis of Funding]. B-192359.
December 6, 1978. 3 pp.**

**Decision re: Prime Computer, Inc.; by Milton J. Socolar, General
Counsel.**

**Contact: Office of the General Counsel: Procurement Law I.
Organization Concerned: Smithsonian Institution: Smithsonian
Astrophysical Observatory, Cambridge, MA.
Authority: 31 U.S.C. 71. 31 U.S.C. 74. 55 Comp. Gen. 674. 57
Comp. Gen. 89. 57 Comp. Gen. 8.**

**A company asked that a Smithsonian Astrophysical
Observatory (SAO) contract award be canceled, alleging that SAO
misstated the basis of funding for the procurement and misled it
as to appropriate protest procedures. This allegation did not
provide a basis for cancellation of the award in the absence of
evidence of prejudice to competition. (Author/HTW)**

Carter
p. 1

8557

DECISION



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

FILE: B-192359

DATE: December 6, 1978

MATTER OF: Prime Computer, Inc.

DIGEST: Allegation that Smithsonian misstated basis of funding for procurement does not provide basis for cancellation of award in absence of evidence of prejudice to competition.

On March 17, 1978, the Smithsonian Astrophysical Observatory (SAO) issued a request for proposals (RFP) for the provision of a computer system, including the furnishing of hardware and software, maintenance, and the training of SAO personnel. The transmittal letter accompanying the RFP advised prospective contractors that purchase, 5-year lease and 5-year lease-purchase options would be considered and that the procurement was being funded with institutional trust funds.

On March 30, 1978, SAO advised Prime Computer, Inc. (Prime), that it was not the successful offeror and at a debriefing on July 6 informed Prime that its only avenue of protest was through SAO and the Institution because no Federal funds were involved in the procurement.

Prime, however, asserts that Federal funds were being utilized for this procurement and refers to various remarks in the records of congressional appropriation hearings in support of this assertion. Prime contends that it was improper for SAO to attempt to segregate the funds used for this procurement from the appropriated Federal funds and that SAO therefore misstated the basis of funding for this procurement and misled Prime as to the appropriate protest procedure. Prime asks that the award of the contract be canceled and that SAO be directed to reissue the solicitation in proper form so as "to conform to appropriate procurement procedures with

reference to appropriate and applicable protest procedures." Prime has not advocated any other basis for protest and has requested that the protest be considered on the existing record. The Smithsonian Institution has provided us with an extended discussion of SAO funding, accounting and financial practices.

We recognize that the threshold question in this case is whether our Office should consider the matter. Our bid protest jurisdiction is based upon our authority to adjust and settle accounts and to certify balances in the accounts of accountable officers under 31 U.S.C. §§ 71, 74 (1976). See Tele-Dynamics Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPD 60, and cases cited therein.

In its report to our Office in response to Prime's protest, the Smithsonian Institution stated that the Federal Procurement Regulations (FPR) are used as guidelines when conducting trust fund procurements. Concerning this particular procurement, the Smithsonian Institution stated:

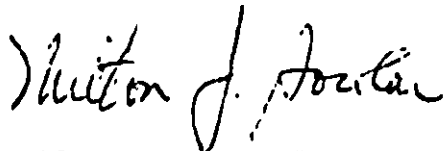
"SAO defined its computing requirements; appropriate equipment specifications were prepared; the solicitation was advertised in the Commerce Business Daily; an RFP was issued to approximately forty (40) firms; three (3) responded; an offeror's conference was held; benchmark demonstrations were required and performed; negotiations were conducted with all the offerors; a call for best and final offers was made and responded to by all offerors. The protester's best and final offer was approximately \$1,400,000. Digital Computer's best and final offer was approximately \$800,000. * * *

Assuming arguendo that we do have jurisdiction over this matter, Prime has failed either to demonstrate or allege the detriment to competition or the prejudice to it or any other prospective contractor

B-192359

which might have flowed from deficiencies in this procurement. In this regard, we perceive no causal connection between the source of funding and the level or integrity of the competition and we note that Prime, while objecting to allegedly erroneous advice regarding available avenues of protest, has failed to indicate either that it intended to protest or what the basis of its protest would have been had it done so. In the absence of effects prejudicial to competition or an award contrary to law or regulation, we have consistently declined to provide relief. See, e.g., Education Turn-key Systems, Inc., 57 Comp. Gen. 8 (1977), 77-2 CPD 267; General Telephone Company of California, 57 Comp. Gen. 89 (1977), 77-2 CPD 376. Consequently, even if we were to determine that Federal funds were involved in this procurement and that we have the jurisdiction to decide this protest, we would have no basis to recommend the relief sought by the protester.

The protest is dismissed.



Milton J. Socolar
General Counsel