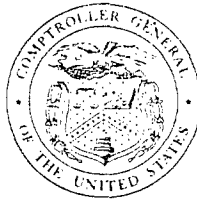


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DECISION



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

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FILE: B-193301

DATE: February 6, 1979

MATTER OF: Bell & Howell Corporation; Realist, Inc.

[Protest Alleging that Sole-Source Procurement Was Improper]

DIGEST:

Protester has burden of affirmatively proving its case. Burden has not been met where, as here, the only evidence is conflicting statements of parties as to whether protesters' equipment would satisfy Government's legitimate needs and consequently, sole-source procurement from another vendor was not improper.

On September 27, 1978, the Department of the Army (Army), Defense Supply Service-Washington, awarded a contract on a sole-source basis to Data View, Incorporated (Data View), for 353 microfiche readers. The readers were procured for the Army's Military Personnel Center. According to the Army, the sole-source contract was awarded to Data View pursuant to 10 U.S.C. § 2304(a)(10) (1976), as implemented by Defense Acquisition Regulation § 3-210.2(1) (1976 ed.), i.e., it was impracticable to obtain competition. To be more specific, the Army asserts that Data View's reader model DV 1018 is the only reader which has the following five characteristics which the Army deems to be essential--

1. Dual image readers which would enable the operator to see both sides of the document at the same time.
2. Dual lens which would enable the operator to read two different size fiche.
3. Dual platens which would enable the operator to compare two fiche concurrently.
4. Rear image viewers which would enable the operator to view the fiche from the optimum viewing point.

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5. Reader base not to exceed 365 square inches since desk top workspace is limited.

We have been informed by the Army that all microfiche readers have been delivered and installed.

Subsequent to award, Bell & Howell Corporation and Realist, Inc., filed timely protests with our Office. Both firms contend that they produce readers which would satisfy all of the Army's requirements. Consequently, they contend that the sole-source procurement from Data View was improper.

Because of the requirement in Federal procurement for maximum practical competition, agency decisions to procure sole source must be adequately justified and are subject to close scrutiny. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. We have recognized that there are certain circumstances under which a sole-source procurement is justified--such as where the Government's legitimate needs could be satisfied only by items or services which are unique; where time is of the essence and only one known source can meet the Government's needs within the required timeframe; where data is unavailable for competitive procurement; where it is necessary that the desired item manufactured by one source be compatible and interchangeable with existing equipment. Environmental Protection Agency sole-source procurements, 54 Comp. Gen. 58 (1974), 74-2 CPD 59.

The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. While the protesters contend that they manufacture readers which will satisfy the Government's legitimate needs, neither protester has submitted descriptive literature or other data to substantiate the assertions. Under the circumstances, it is our view that the protesters have not met the burden of proof.

If, however, as the protesters contend, they manufacture equipment which will meet all the essential characteristics of the agency, information establishing this fact should be presented to and evaluated by the agency for future procurements.

Accordingly, since there has been no showing that the features required were unreasonable or do not reflect the minimum needs of the agency, the protests are denied.



Deputy Comptroller General
of the United States