

DECISION

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

23337

FILE: B-203882.3

DATE: October 15, 1982

MATTER OF: Amdahl Corporation--Reconsideration

DIGEST:

1. Prior decision, in which protester failed to demonstrate that agency did not fulfill its obligation to ascertain possibility of alternate sources, is affirmed. Burden is on protester to show that agency erred. Protester's continuing inability to identify alternate sources confirms--rather than refutes--agency's determination that no alternate sources for software were available.
2. Contention that protester's offer to commit in writing to provide software support was sufficient to constitute alternate source that agency had to consider is without merit. Agency's requirement was for a present, existing, functioning capability to provide support. We agree with agency's apparent conclusion that offer of commitment, without evidence of capability, was insufficient.

Amdahl Corporation (Amdahl) has requested reconsideration of our decision in the matter of Amdahl Corporation, B-203882.2, May 5, 1982, 82-1 CPD 421. In that decision, we denied a protest by Amdahl against an invitation for bids issued by the National Aeronautics and Space Administration (NASA) for the acquisition of an International Business Machines (IBM) computer. Amdahl contended that the IFB was unduly restrictive because it did not permit consideration of compatible non-IBM computers. We found that NASA's requirement for an IBM computer was reasonably based and not unduly restrictive because it was based on a requirement for software support which NASA reasonably concluded was available only on an IBM computer.

Amdahl contends that our prior decision was factually and legally in error, mainly on the statement in our decision that:

023679

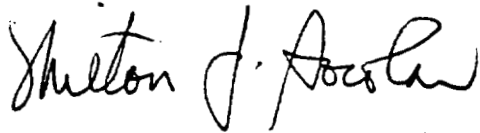
"* * * While it is no doubt true that there are so-called 'software houses' capable of developing the capacity to support TSS, Amdahl has not identified any with either the present or imminent capacity to compete in this limited market. * * *"

Amdahl contends that this statement is erroneous in two respects: First, Amdahl contends that the statement is legally in error because it is the affirmative duty of NASA procurement officials to determine that such sources of supply do not exist before they restrict competition and Amdahl is under no obligation to identify sources for them. Second, Amdahl contends that this statement is factually in error because Amdahl had previously advised NASA that Amdahl would "'commit in writing to whatever level of support for the TSS product that IBM offers to commit in writing.'" We find Amdahl's contentions unpersuasive.

Although we agree with Amdahl that NASA was obligated, in the procurement planning stage, to make reasonable efforts to ascertain whether non-IBM sources of support for TSS might be available, we point out that in a bid protest the burden of proof is on the protester. Integrated Forest Management, B-200127, March 2, 1982, 82-1 CPD 182; Potonac Industrial Trucks, Inc., B-204648, January 27, 1982, 82-1 CPD 61; Stacor Corporation, B-204364.2, January 8, 1982, 82-1 CPD 24; Edward E. Davis Contracting, Inc., B-198725, January 12, 1981, 81-1 CPD 19. It was Amdahl's obligation to demonstrate that NASA failed in its duty to ascertain whether alternate sources for TSS support existed. We find that Amdahl's apparent inability, even with this second opportunity, to identify any alternate source "with either the present or imminent capacity" to support TSS, confirms--rather than refutes--NASA's position. We find no error in our prior decision.

Amdahl's second contention avoids the question of NASA's requirements. What NASA needed was a present, existing, functioning capability to support TSS. We agree with NASA's apparent conclusion that Amdahl's proposed "commitment" falls short of evidencing such capability--in connection with which, we note, Amdahl has provided neither evidence nor the allegation that Amdahl, in fact, possesses such capability. Again, we see no error.

Our decision is affirmed.

for 
Comptroller General
of the United States