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DECISION



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

FILE: B-202813.3

DATE: May 12, 1983

MATTER OF: M/A-COM Sigma Data, Inc.

DIGEST:

Protest and claim for proposal preparation costs based on Government allegation filed in Federal court that contractor fraudulently rigged the preaward demonstration tests conducted by the contracting agency to evaluate the equipment proposed is dismissed as premature because resolution of matter must depend upon evidence that ultimately will be presented in court litigation.

M/A-COM Sigma Data, Inc. protests the award of a contract to Paradyne Corporation under request for proposals No. SSA-RFP-80-0253 issued by the Social Security Administration (SSA) to update its existing nationwide computer access telecommunications data system. We believe that it would be premature to consider the matter at this time.

SSA awarded Paradyne the subject contract in March 1981. Sigma Data protested the award to SSA by letter dated April 17, 1981. Among other things, Sigma Data argued that Paradyne did not comply with a number of the solicitation requirements relating to demonstration tests conducted during the competition. By letter of June 22, 1981, SSA denied Sigma Data's protest.¹

¹This procurement was also the subject of an unrelated protest to GAO by Sperry Univac. In that protest, which we denied, Sperry contended that SSA improperly rejected Sperry's low offer. Sperry Univac, B-202813, March 22, 1982, 82-1 CPD 264, aff'd B-202813.2, July 7, 1982, 82-2 CPD 27.

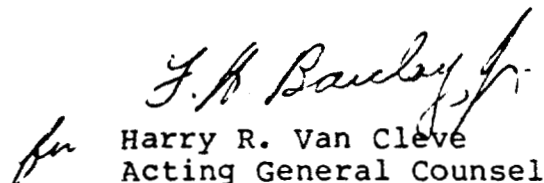
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The Securities and Exchange Commission (SEC) recently brought suit against Paradyne, charging violations of the Securities Act of 1933, as amended, 15 U.S.C. § 77q(a) (1976) and the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78j(b) and 78m(a). Securities and Exchange Commission v. Paradyne Corporation, Civ. No. 83-351 CIV-T-10 (M.D. Fla., filed March 25, 1983). In its complaint, the SEC alleges that Paradyne, in connection with the preaward operational capability demonstration tests conducted by SSA, used dummy equipment; used equipment made by a competitor but altered it to appear to be Paradyne's; and altered other equipment so that the processing rates appeared to be met, when in fact they were not, so that, in sum, the tests were rigged and fraudulent.

Sigma Data contends that Paradyne's contract should be considered void ab initio because of this fraudulent activity and that award should be made to the next low offeror or, as a minimum, negotiations reopened with the original offerors in the competitive range. In addition, Sigma Data requests award of proposal preparation costs. Based on this same information, Sigma Data has also requested that SSA reconsider its June 22 denial of that firm's original protest.

The protest and claim for proposal preparation costs will not be considered at this time. They are based solely upon the SEC allegations only recently filed with the court. No evidence has been presented; no judgment has been rendered. Furthermore, the protester itself recognizes that it expects the evidence necessary for sustaining the protest and claim to come from the SEC litigation. Thus, at this point we can only view the protest and claim as premature and we decline to consider them.

The protest and claim are dismissed.


Harry R. Van Cleave
Acting General Counsel